**RAJOO RAMASAMY**

**v.**

**INSPECTOR-GENERAL OF POLICE & ORS.**

HIGH COURT MALAYA, PENANG
EDGAR JOSEPH JR J
[CRIMINAL APPLICATION NO. 44-56-89]
7 DECEMBER 1989

***ADMINISTRATIVE LAW:*** *Application for writ of habeas corpus - Detention under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 - Detention for two years - Applicant later released on habeas corpus application - Minister appealed - Re-arrest - Second application for habeas corpus - Dismissed by Supreme Court - Yang di-Pertuan Agong allowed extension of time to advisory board to consider representations - Confirmation of order - Whether there had been violation of Article 151(1)(b) of the Constitution - Application for extension of time made outside 3 month period - whether ultra vires Article 151(1)(b) - Section 10(2) of the Dangerous Drugs (Special Preventive Measures) Act - Whether there was compliance with requirement - Sections 39, 45 & 109 of the Interpretation and General Clauses Act.*

The applicant had been detained under an order made by the Minister of Home Affairs pursuant to the powers conferred upon him by s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 - the first detention order.

The applicant then made representations to the advisory board under the provisions of Article 151(1)(a) of the Federal Constitution. Before the board could hear representations, the applicant applied for a writ of *habeas corpus,* and was granted the same and released the same day.

The Minister appealed against the decision. While the appeal was pending, the applicant was re-arrested and detained under a second detention order.

A second application for a writ of *habeas corpus* was made; this time in the High Court, Penang.

On 30 July 1989 the Supreme Court allowed the appeal from the decision of the High Court, Kuala Lumpur and set aside the order for the grant of *habeas corpus* and substituted in lieu thereof, an order dismissing the applicant's application.

In consequence, 24 February 1989, the Minister revoked the second detention order.

On 14 March 1989 the applicant's second application for *habeas corpus* was dismissed.

Pursuant to Article 151(1)(b) of the Federal Constitution the Yang di-Pertuan Agong allowed an extension of time of 10 months and 9 days commencing 23 May 1988.

On 27 March 1989, the advisory board conferred the first detention order made by the minister.

Now the applicant again seeks an order for *habeas corpus.*

**Held:**

**[1]** The respondents cannot rely upon s. 39 of the Interpretation and General Clauses Ordinance 1948 to meet the applicant's argument that the Yang di-Pertuan Agong had no power to extend time.

**[2]** By virtue of ss. 45 and 109 of the Act the Yang di-Pertuan Agong has power to extend time for purposes of Article 151(1)(b) even though the application for extension of time was made to his Majesty after the expiry of the period fixed thereunder.

**[3]** There are however ample grounds for the Yang di-Pertuan Agong to have granted the extension of time in view of the chequered history of this case.

**[4]** A decision of the Yang di-Pertuan Agong under s. 10(2) of the Act agreeing with the recommendation of the advisory board must be made within a reasonable time, but considering the circumstances of the case, there has been compliance with this requirement.

**[5]** The applicant has not suffered any prejudice although there has been no communication of the decision of the Yang di-Pertuan Agong.

*[Application dismissed.]*

**Cases referred to:**
*Karpal Singh v. Inspector General of Police [1989] 1 MLJ 184*
*Re Tan Boon Liat [1977] 2 MLJ 108*
*Keymer v. Reddy [1912] 1 KB 221*
*Lee Lee Cheng v. Seow Peng Kwang [1960] MLJ 1*
*Jayaraman a/l Arumugam v. the Minister of Home Affairs [1989] 1 CLJ (Rep) 629*

**Legislation referred to:**
Courts of Judicature Act 1964, para 8 Schedule
Dangerous Drugs (Special Preventive Measures) Act 1985, s. 6(1)
Federal Constitution, art. 151(1)(a)
Interpretation Acts 1948/1967, ss. 45, 109
Interpretation Act 1967, s. 3, (1)
Interpretation and General Clauses Ordinance 1948, s. 39
Rules of the High Court 1980, O. 3 rr. 5(2), (3)

*For the applicant - Karpal Singh; M/s. Karpal Singh & Co.*
*For the respondents - Balia Yusof bin Wahi; Senior Federal Counsel*

**JUDGMENT**

**Edgar Joseph Jr J:**

In this application for a writ of *habeas corpus ad subjuciendum* the history of the matter which called for the consideration of the Court may be stated briefly thus.

The applicant had been detained under a detention order made by the Minister of Home Affairs pursuant to the powers conferred upon him by s. 6(1) of the Dangerous Act (Special Preventive Measures) Act 1985, ("the Act") directing detention for a period 2 years with effect from 30 May 1988 at the Pusat Pemulihan Akhlak, Muar, Johor ("the Centre"). For brevity and convenience, I shall hereinafter refer to this detention order as "the first detention order".

On 22 May 1988, the applicant had made representations to the Advisory Board under the provisions of Article 151(1)(a) of the Federal Constitution.

The Advisory Board then fixed 20 July 1988 for the hearing of the representations but, in the meanwhile, pursuant to an application for a writ of *habeas corpus*, filed by the applicant, the High Court sitting in Kuala Lumpur had on 14 July 1988 granted the same and directed his release and he was in fact released on the same day, but the Minister being dissatisfied with the decision appealed against it to the Supreme Court.

The applicant's freedom was short-lived for, while the appeal by the Minister was still pending, precisely, on 17 September 1988, he was re-arrested pending enquiries under s. 3(1) of the Act and on 14 November 1988, he was detained under another detention order made by the Minister pursuant to the powers conferred upon him by s. 6(1) of the Act directing his detention for a period of two years commencing from 15 November 1988 at the centre. For brevity and convenience, I shall refer to this detention order as "the second detention order".

The applicant then filed a second application for a writ of *habeas corpus* this time in the High Court, Penang.

Then on 30 July 1989 the Supreme Court allowed the appeal from the decision of the High Court, Kuala Lumpur, and set aside the order for the grant of *habeas corpus* and substituted, in lieu thereof, an order dismissing the applicant's application.

In consequence, on 24 February 1989 the Minister revoked the second detention order.

On 14 March, following argument before me in open Court, I dismissed the applicant's second application for *habeas corpus* relying on the decision of the Supreme Court in *Karpal Singh v. Inspector General of Police* [1989] 1 MLJ 184.

On 20 February 1989, pursuant to Article 151(1)(b) of the Constitution, the Yang di-Pertuan Agong allowed an extension of time of 10 months and 9 days commencing from 23 May 1988 within which the advisory board had to consider the representations made by the applicant and make their recommendations thereon to the Yang di-Pertuan Agong.

Accordingly, on 21, 22, 23 and 26 March 1989, at the Centre, the advisory board heard the applicant's representations and, on 27 March 1989, it made its recommendations thereon to the Yang di-Pertuan Agong. In accordance with these recommendations, the Yang di-Pertuan Agong had, pursuant to s. 10(2) of the Act, confirmed the first detention order made by the Minister. It was not clear when this was but it must have been after 27 March 1989.

Before me, Counsel for the applicant has again sought an order of *habeas corpus* relying on three separate grounds, namely:

Firstly, the applicant, a Malaysian citizen, having suffered continued detention without the Advisory Board having considered representation by him and made their recommendations thereon within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong might have allowed, there had been a violation of Article 151(1)(b) of the Constitution, with the result that his detention was unauthorised by Law.

It was argued that the extension of time granted by the Yang di-Pertuan Agong, upon application made **after** expiry of three months period aforesaid, was *ultra vires* the powers conferred by Article 151(1)(b).

Secondly, there being no communication as to when the Yang di-Pertuan Agong had made his decision giving directions to the Minister authorising the continued detention of the applicant pursuant to s. 10(2) of the Act, it could not be said that the same was made within a reasonable time.

Thirdly, there had been no communication to the applicant of the decision of the Yang di-Pertuan Agung pursuant to s. 10(2) of the Act authorising the continued detention of the applicant.

At the outset of the hearing, the learned Federal Counsel took the preliminary objection that the application was barred by estoppel, in that it was open to the applicant in the earlier proceedings to have taken the points he now relies upon.

I overruled the preliminary objection as I was satisfied that the factual matrix upon which the applicant relied in support of his application occurred **after** the termination of the earlier proceedings. Accordingly, the hearing of the application proceeded upon the merits.

As regards the first ground, shortly put, the question of law was whether the Yang di-Pertuan Agong has the power to extend the three month period limited by Article 151(1)(b) upon application made by the advisory board to him **after** expiry of such period. If there was no such power then decision confirming the first detention order would be *ultra vires* and the Court can correct it notwithstanding s. 10(2) of the Act which provides that such decision shall be final and shall not be called into question in any Court. (See *Re Tan Boon Liat* [1977] 2 MLJ 108)

Article 151(1)(b) provides as follows:

> (1) Where any law or ordinance made or promulgated in pursuance of this part provides for preventive detention:
>
> (a) ...
>
> (b) no citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under para. (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow.

I note, in passing, that s. 10(1) of the Act is in *pari materia,* but *mutatis mutandis,* with Article 151(1)(b). But, as in this case, it was common ground that the Yang di-Pertuan Agong had on 28 February 1989, pursuant to Article 151(1)(b), granted an extension of time of ten month and nine days commencing from 23 May 1988 within which the advisory board had to consider the representations by the applicant and make recommendations thereon, I need only have regard to the provisions of the Constitution, so far as this part of the case is concerned.

It is obvious that Article 151(1)(b) contains no provision enabling the Court to extend time upon application made to it after the expiration of that period. Contrast, for example, O. 3 rr. 5(2) and 3) of the Rules of the High Court 1980, wherein such power is expressly provided for in respect of periods limited by the Rules of High Court or by any judgment order or direction. And, there appears to be authority for saying that a Court has inherent jurisdiction to extend time in interlocutory proceedings independently of the rule. (see *Keymer v. Reddy* [1912] 1 KB 221) or the period of time fixed by an interlocutory order of the Court for doing some act in some proceeding. In the present case, however, I am not concerned with the extension of a period of time fixed by a rule or order of Court.

I might mention in passing that item 8 of the Schedule of the Courts of Judicature Act 1964, (Revised - 1972), is merely declaratory of the jurisdiction of the High Court to enlarge time prescribed by any written law for the doing of any act or taking any proceeding although any application therefore be not made until after the expiration of the time prescribed, always provided there is express provision in the particular law itself which enables such time to be enlarged. (See *Lee Lee Cheng v. Seow Peng Kwang* [1960] MLJ 1)

Clearly, therefore, I am thrown back to considering the particular provisions of the law under consideration, that is to say, the Constitution.

Now, Article 160(1) of the Constitution provides as follows:

> The Interpretation and General Clauses Ordinance 1948, as in force immediately before Merdeka Day shall, to the extent specified in the Eleventh Schedule, apply for the interpretation of this Constitution as it applies for the interpretation of any written law within the meaning of that Ordinance, but with the substitution of references to the Yang di-Pertuan Agong for references to the High Commissioner.

But, the Eleventh Schedule makes no mention (and thereby excludes) s. 39 of the Interpretation and General Clause Ordinance 1948, which provides:

> Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a Court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the Court or other authority although the application for the same is not made until after the expiration of the time prescribed.

It appears, therefore, that the respondents cannot rely on s. 39 of the Interpretation and General Clauses Ordinance 1948, to meet the applicant's argument that the Yang di-Pertuan Agong had no power to extend time.

That, however, is not the end of the matter, for I next have to consider ss. 45 and 109 of the Interpretation Acts 1948 and 1967, (Consolidated and Revised - 1989) ("the Interpretation Acts"), which provide as follows:

> **Section 45**
>
> Where in any **written law** a time is prescribed for doing any act or taking any proceeding and power is given to a Court or other authority to extend that time, the power may be exercised by the Court or authority although the application for its exercise is not made until after the expiration of the time prescribed.
>
> **Section 109**
>
> Where in any **written law** a time is prescribed for doing any act or taking any proceeding and power is given to a Court or other authority to extend such time, unless the contrary intention appears the power may be exercised by the Court or other authority although the application for the same is not made until after the expiration of the time prescribed.
> (Emphasis supplied)

By s. 3 of the Interpretation Act 1967, "written law" means, *inter alia*, the Federal Constitution.

It appears to me, therefore, that by virtue of ss. 45 and 109 of the Interpretation Acts the Yang di-Pertuan Agong has power to extend time for purposes of Article 151(1)(b) even though the application for extension of time is made to him after expiry of the period fixed thereunder.

There were, of course, ample grounds for the Yang di-Pertuan Agong to have granted the extension of time in view of the chequered history of the case which I have outlined above.

Accordingly, the first ground of objection fails.

As regards the second ground, I agree that a decision of the Yang di-Pertuan Agong under s. 10(2) of the Act agreeing with the recommendations of the Advisory Board must be made within a reasonable time but, considering the circumstances of this case, I cannot accept that there has been non-compliance with this requirement.

As regards the third ground, it is true that there had been in this case no communication to the applicant or his solicitors of the decision of the Yang di-Pertuan Agong made pursuant to s. 10(2) of the Act, authorising the continued detention of the applicant. However, I fail to see what prejudice the applicant has suffered as a result. (See *Jayaraman a/l Arumugam v. The Minister of Home Affairs* [1989] 1 CLJ (Rep) 629).

In all the circumstances, the application for *habeas corpus* was dismissed.

Also found at [1990] 1 CLJ 554